

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 901 of 1997

with

Civil Application No. 4462 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UNITED INDIA INSURANCE CO LTD

Versus

LEGAL HEIRS OF DECD.DINESHBHAIMAKODBHAI

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Appearance:

MR PV NANAVATI for appellant.

MR DIYESH SEJPAL for respondents/org.claimants.

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CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 23/04/98

ORAL JUDGEMENT (Per J.N. Bhatt, J.)

Leave to delete respondents No.5 and 6 as prayed for by learned advocate for the appellant, as the sole controversy is with regard to the quantification of damages, is granted. Respondents No.5 and 6 stand deleted.

Admit. Learned advocate Mr. Sejpal waives service for the affected and interested parties-claimants.

The only question which requires to be examined and adjudicated upon in this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), as to whether the assessment of amount of compensation to the tune of Rs.4,60,000 awarded by the Tribunal for the death of a young labourer, aged about 20 years, whose life was cut short at the cruel hands of providence on the road accident which occurred, on 16.7.1994, at about 10 P.M. on Timbi- Urmala State Highway, leaving a daughter of hardly two months, widow and parents, is just and reasonable or not?

The deceased was doing labour work. The Tribunal has found that he was doing diamond cutting and polishing work. Reliance is placed on the salary certificate and the copies of the extract of books of accounts of the master of the deceased, Dinesh, which, the Tribunal has also not accepted. As per the case of the claimants, deceased was earning an amount of Rs.4,000 per month at the relevant time. Nobody is examined for and on behalf of the employer of the deceased. The Tribunal has taken the monthly income of the deceased at Rs.3,500 and awarded an amount of Rs.4,20,000 towards loss of dependency, awarded an additional conventional amount of Rs.20,000 and also another amount of Rs.20,000 towards the medical and other expenses and thus in all an amount of Rs.4,60,000 came to be awarded to the claimants.

Since the only controversy raised before us is with regard to the quantification of the damages, the discretionary power exercised by the Tribunal, based upon the correct assessment and acceptable appraisal of the evidence so as to determine just and reasonable amount of compensation, ordinarily, the appellate Court would be loath to interfere with. However, in the present case, we have noticed that the monthly income of the deceased who was aged about 20 years, is straightaway taken at Rs.3500 without any supporting material or documentary evidence. The Tribunal has awarded an amount of Rs.4,20,000 under the head of loss of dependency value which, in our opinion, is on a higher side, requiring reduction so as to arrive at just and reasonable amount of compensation, which is the underlying design of the provisions of Section 166 of the Act.

After having seen the documentary evidence, copies, whereof, came to be supplied to us during the course of submission before us and the rival submissions raised

before us, in our opinion, the ends of justice will be satisfied if the amount awarded is reduced so as to arrive at a just and reasonable amount of compensation. Even by taking a liberal assessment and view, an amount to the tune of Rs.4,00,000, against the award of Rs.4,60,000. We are, therefore, satisfied that the awarded amount if rounded off to the extent of Rs.4,00,000 would be just, reasonable and proper. Hence, we award compensation of Rs.4,00,000 in all to the original claimants.

The amount has ready been deposited and is lying before the Tribunal. Therefore, the Tribunal is directed to refund an amount of Rs.60,000 with proportionate cost and interest to the appellant/ insurer of the offending vehicle.

In so far as the question of apportionment of the amount of compensation, as stated hereinabove by us, is concerned, we have to apportion the amount between four claimants, in such a way that the amount should represent the possible extent and dependence of each one upon the earnings of the deceased. Respondent No.1/original claimant No.1, widow of the deceased, who, admittedly, has remarried, shall be entitled to an amount of Rs.50,000 with proportionate cost and interest out of which 10% amount with proportionate cost and interest shall be paid to her by an account payee cheque and remaining amount shall be deposited. Respondent No.2, minor Gopi, who was hardly 2 months old at the time of the unfortunate road mishap when she lost her father. We are told that she is now in the care and custody of the parents of the deceased, respondents No.3 and 4- the grandparents of the respondent No.2. We are, therefore, inclined to apportion Rs.2,50,000 with proportionate cost and interest, towards the share of respondent No.2/original claimant No.2. Out of the said amount, Tribunal is directed to deposit an amount of Rs.1,50,000 with proportionate cost and interest, in a cumulative scheme in which no interest shall be payable, in the name of the minor through guardian/ respondent No.3- original claimant No.3, grand-father of the minor, till she attains the age of majority. Remaining amount of Rs.1,00,000 with proportionate cost and interest shall be invested in such a way that the interest shall be payable to the guardian of the minor for her betterment, welfare and upkeepment. Respondents No.3 & 4/ original claimants No.3 and 4, who are the parents of the deceased, shall be entitled to Rs.50,000 each with proportionate cost and interest. The Tribunal is directed to deposit 90% of the amount with proportionate cost and interest, that comes

to the respective shares of the parents of the deceased and the interest shall be payable to the parents and remaining 10% amount in each case, with proportionate cost and interest, shall be disbursed to them by account payee cheque.

The Tribunal is directed to invest as per the aforesaid direction in fixed deposit receipt in any nationalized bank or in any other government security or in any other government undertaking- Corporation where interest rate is higher. The claimants or the depositors shall not be entitled to create any charge, incumbrance or raise any loan on the deposited amount without prior approval of this Court.

The amount of Rs.25,000 deposited alongwith this appeal is more than the amount due and payable by the insurer-appellant, as the amount has already been deposited before the Tribunal. In the circumstances, the amount of RS.25,000 deposited before this Court shall be refunded to the appellant by the registrar of this court.

In the facts and circumstances, the appeal shall stand, partly, allowed leaving the parties to bear their own costs.

No order on civil application.